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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/723,501
Filing Date: November 28, 2000
Appellant(s): MCDYSAN ET AL.

MAILED

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Technology Center 2100

Phouphanomketh Ditthavong
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For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 23, 2007 appealing from the Office

action mailed August 25, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial

proceedings which will directly affect or be directly affected by or have a bearing on the

Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection

contained in the brief is correct, in that no amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is

correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The Examiner relied upon Miles et al., U.S. Patent No. 6,665,495, Gai et al., U.S.

Patent No. 6,167,445, Bullock et al., U.S. Patent No. 6,631,414, and Bowman-Amuah,

U.S. Patent No. 6,442,547.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by
another filed in the United States before the invention by the applicant for patent or (2) a patent
granted on an application for patent by another filed in the United States before the invention by the
applicant for patent, except that an international application filed under the treaty defined in section
351(a) shall have the effects for purposes of this subsection of an application filed in the United States
only if the international application designated the United States and was published under Article 21(2)
of such treaty in the English language.

2.   Claims 2-6, 9, 20-24, 27, 37, and 38 are rejected under 35 U.S.C. 102(e) as

being anticipated by Miles et al., U.S. Patent No. 6,665,495.

Miles teaches the invention as claimed including a non-blocking scalable optical router having an architecture that optimizes bandwidth management to allow for non-blocking switching and routing of optical data packets (see abstract).

Regarding claim 37, Miles teaches an external processor for a network access system having a programmable access device, said external processor comprising:

a message processor configured to parse a message for determining a type of communication service (col. 26, line 64 – col. 27, line 14, Miles discloses a packet classification module);

a service controller configured to receive the message if the type of communication service corresponds to the service controller, wherein the service controller determines a policy based on the message and generates a control signal according to the policy (col. 27, lines 38-64, col. 28, lines 24-32, Miles discloses policy based routing, a QoS controller, and a classification index based on QoS/policy); and

a programmable access device (PAD) controller configured to receive the control signal for configuring a PAD to enforce the policy with respect to a network connection between a first network and a second network (col. 28, lines 33-49, Miles discloses a classification index sent to an optical switch core which then routes the packets to the appropriate destination).

Regarding claim 2, Miles teaches the external processor of claim 37, wherein the external processor includes a plurality of service controllers including said service

controller, wherein each of said plurality of service controllers implements a respective one of a plurality of services (col. 27, lines 38-64, col. 28, lines 24-49; Miles discloses the use of different controllers).

Regarding claim 3, Miles teaches the external processor of claim 2, wherein the plurality of service controllers includes primary and secondary service controllers for a particular service among said plurality of services, and wherein the secondary service controller provides said particular service to said programmable access device if said primary service controller fails (col. 31, lines 1-19; Miles discloses the use of deflection routing).

Regarding claim 4, Miles teaches the external processor of claim 2, wherein said plurality of service controllers includes a second service controller in communication with said first service controller such that a network message can be serviced by both of said first service controller and said second service controller (col. 25, lines 7-22, Miles discloses unit controllers used for message exchange).

Regarding claim 5, Miles teaches the external processor of claim 2, wherein the external processor is coupled to a plurality of programmable access device, and wherein at least one of the plurality of service controllers performs selectively service processing for a portion of said plurality of programmable access devices (col. 9, lines 1-12, col. 10, lines 27-51; Miles discloses multiple switch cores with different functions).

Regarding claim 6, Miles teaches the external processor of claim 37, wherein the

service controller includes means for injecting a packet into a traffic flow handled by the

programmable access device (col. 28, lines 33-49; Miles discloses the super packets

sent by the QoS controller to the optical switch core which are then injected in to traffic

flow).

Regarding claim 9, Miles teaches the external processor of claim 37, and further

comprising a reporting processor that provides an interface through which a reporting

event received from the programmable access device is communicated to the service

controller (col. 28, line 33 – col. 29, line 17; Miles discloses event information

transferred between the optical switch core and the QoS controllers module).

Claims 20-24, 27, and 38 do not teach or define any new limitations above claims

2-6, 9, and 37 and therefore are rejected for similar reasons.

Claim Rejections - 35 USC § 103

3.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

4.   Claims 7, 8, 10, 11, 25, 26, 28, and 29 are rejected under 35 U.S.C. 103(a) as

being unpatentable over Miles further in view of Gai et al., U.S. Patent No. 6,167,445.

Miles teaches the invention substantially as claimed including a non-blocking

scalable optical router having an architecture that optimizes bandwidth management to

allow for non-blocking switching and routing of optical data packets (see abstract).

As to claims 7, 8, 25, and 26, Miles teaches the method of claims 37 and 38.

Miles fails to teach the limitation further including a service policy interface

through which the service controller requests policy decisions from a policy server and a

policy cache that selectively caches policies obtained from the policy server.

However, Gai teaches a method and apparatus for applying high-level, quality of

service policies at dissimilar computer network devices (see abstract). Gai teaches the

use of policy servers (col. 5, lines 63-67; col. 6, lines 1-26) and a policy translator with

storage (col. 9, lines 59-67; col. 10, lines 1-34).

It would have been obvious to one of ordinary skill in the art at the time of the

invention to modify Miles in view of Gai to use a service policy interface through which

the service controller requests policy decisions from a policy server and a policy cache

that selectively caches policies obtained from the policy server. One would be

motivated to do so because policy servers allow a set of rules that can be applied to the

network and the policy cache allows for those rules to be more quickly accessible.

As to claims 10, 11, 28, and 29, Miles teaches the method of claims 37 and 38.

Miles fails to teach the limitation further including a signaling controller that

transmits signals, that specify a quality of service, to configure network hardware to

provide network connections.

However, Gai teaches a method and apparatus for applying high-level, quality of

service policies at dissimilar computer network devices (see abstract). Gai teaches the

use of signals with a quality of service (col. 6, lines 27-67; col. 7, lines 1-29).

It would have been obvious to one of ordinary skill in the art at the time of the

invention to modify Miles in view of Gai to use a signaling controller that transmits

signals, that specify a quality of service, to configure network hardware to provide

network connections. One would be motivated to do so because signals with a specific

quality of service help make efficient traffic management decisions.

5.   Claims 12, 13, 30, and 31 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Miles further in view of Bullock et al., U.S. Patent No. 6,631,414.

Miles teaches the invention substantially as claimed including a non-blocking

scalable optical router having an architecture that optimizes bandwidth management to

allow for non-blocking switching and routing of optical data packets (see abstract).

As to claims 12, 13, 30, and 31, Miles teaches the method of claims 37 and 38.

Miles fails to teach the limitation further including the service controller

comprising a session management means for causing the programmable access device

controller to signal the programmable access device to end a Transport Control Protocol

(TCP) session receiving enhanced service and wherein the session management

means comprises means for causing the programmable access device controller to signal the programmable access device to delete the TCP session state in response to a session activity level.

However, Bullock teaches incoming and outgoing communications between peer nodes requiring only a single line per dedicated peer (see abstract). Bullock teaches the use of a session manager job event handler that ends and deletes a TCP session in response to a session activity level (col. 8, lines 46-67; col. 9, lines 1-13).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Miles in view of Bullock to use a service controller comprising a session management means for causing the programmable access device controller to signal the programmable access device to end a Transport Control Protocol (TCP) session receiving enhanced service and wherein the session management means comprises means for causing the programmable access device controller to signal the programmable access device to delete the TCP session state in response to a session activity level. One would be motivated to do so because if there is no activity on a TCP session then it should be ended and deleted so that no more packets will be sent to it.

6.   Claims 14-18 and 32-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miles further in view of Bowman-Amuah, U.S. Patent No. 6,442,547.

Miles teaches the invention substantially as claimed including a non-blocking scalable optical router having an architecture that optimizes bandwidth management to allow for non-blocking switching and routing of optical data packets (see abstract).

As to claims 14 and 32, Miles teaches the method of claims 37 and 38.

Miles fails to teach the limitation further including the service controller comprising a conference call service controller.

However, Bowman-Amuah teaches information service management in hybrid communication network system, including data and communications management (see abstract). Bowman-Amuah teaches the use of an automated callback system for call setup and control of a conference call (col. 39, lines 14-67; col. 40, lines 1-5).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Miles in view of Bowman-Amuah to use a service controller comprising a conference call service controller. One would be motivated to do so because it would allow the invention to handle conference calls.

As to claims 15 and 33, Miles teaches the method of claims 37 and 38.

Miles fails to teach the limitation further including the service controller comprising an e-commerce service controller.

However, Bowman-Amuah teaches information service management in hybrid communication network system, including data and communications management (see abstract). Bowman-Amuah teaches the use of "Next Generation Network" architecture enabling E-Commerce services (col. 14, lines 59-67; col. 15, lines 1-27).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Miles in view of Bowman-Amuah to use a service controller

comprising an e-commerce service controller. One would be motivated to do so because it would allow the invention to participate in e-commerce.

As to claim 16 and 34, Miles teaches the method of claims 37 and 38.

Miles fails to teach the limitation further including the service controller comprising an Internet protocol telephony service controller.

However, Bowman-Amuah teaches information service management in hybrid communication network system, including data and communications management (see abstract). Bowman-Amuah teaches the use of a "Next Generation Network" cable infrastructure that can provide IP based telephony services (col. 19, lines 43-60).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Miles in view of Bowman-Amuah to use a service controller comprising an Internet protocol telephony service controller. One would be motivated to do so because it would allow the invention to handle IP telephony.

As to claims 17 and 35, Miles teaches the method of claims 37 and 38.

Miles fails to teach the limitation further including the service controller comprising a reserved bandwidth service controller.

However, Bowman-Amuah teaches information service management in hybrid communication network system, including data and communications management (see abstract). Bowman-Amuah teaches the use of a predetermined amount of bandwidth (col. 4, lines 7-65).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Miles in view of Bowman-Amuah to use a service controller comprises a reserved bandwidth service controller. One would be motivated to do so because it would help avoid bandwidth congestion.

As to claims 18 and 36, Miles teaches the method of claims 37 and 38.

Miles fails to teach the limitation further including the service controller comprising a multicast service controller.

However, Bowman-Amuah teaches information service management in hybrid communication network system, including data and communications management (see abstract). Bowman-Amuah teaches the use a of Real-Time Transport Protocol for transmission of real-time data over multicast networks (col. 40, lines 34-67; col. 41, lines 1-58).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Miles in view of Bowman-Amuah to use a service controller comprising a multicast service controller. One would be motivated to do so because it would allow the invention to multicast.

(10) Response to Argument

The Examiner summarizes the various points raised by the Appellant and addresses replies individually.

With regards to the arguments in reference to the 102 rejection, the Appellant argues, that a rule 131 declaration was submitted to establish conception of the invention prior to the effective date of Miles et al. and to establish due diligence from a period before the effective date of Miles et al. (October 27, 2000) until the filing of the present application on November 28, 2000.

The Examiner agrees that the conditions for signature has been met and those arguments have been removed.

The Appellant argues that it is not apparent what the Examiner wants in terms of an explanation of conception.

In response to the argument, the Examiner respectfully disagrees: It was clearly stated in the Final Rejection what the Appellant was required to do to prove conception. The Examiner directly quoted section 715.07 [R-3] of the MPEP and made bold the pertinent sections as shown: "**The affidavit or declaration and exhibits must clearly explain which facts or data applicant is relying on to show completion of his or her invention prior to the particular date.** Vague and general statements in broad terms about what the exhibits describe along with a general assertion that the exhibits describe a reduction to practice "amounts essentially to mere pleading, unsupported by proof or a showing of facts" and, thus, does not satisfy the requirements of 37 CFR 1.131(b). In re Borkowski, 505 F.2d 713, 184 USPQ 29 (CCPA 1974). **Applicant must**

give a clear explanation of the exhibits pointing out exactly what facts are

established and relied on by applicant. 505 F.2d at 718-19, 184 USPQ at 33. See

also In re Harry, 333 F.2d 920, 142 USPQ 164 (CCPA 1964) (Affidavit "asserts that

facts exist but does not tell what they are or when they occurred.")." In addition, the

Examiner stated: "The applicant needs to show how the exhibits support the claimed

invention. Merely pointing to exhibits and stating that they show the claimed invention is

not sufficient. A clear explanation of how the exhibits support conception of the claimed

invention must be part of the declaration." The Examiner fails to see how this is a

vague dismissal, it is clearly pointed out in the MPEP and the Response to Arguments.

In items 5-16 of the declaration the Appellant has done nothing other than point

to over 90 pages as proof of conception without any explanation of what facts are

established in the exhibits and used in the claims. This declaration does not follow the

guidelines of the MPEP. Even though this alone would make the declaration defective,

the Examiner reviewed all the exhibits and failed to find portions from independent claim

37 including a portion of a limitation that "generates a control signal according to the

policy" and a full limitation which is "configuring a PAD to enforce the policy with respect

to a network connection between a first network and a second network." These

unsupported limitations are even more evidence that the Appellant has failed to prove

conception of this invention.

    <u>In response to the Appellants arguments regarding due diligence</u>: According the

715.07(a) of the MPEP, "diligence need not be considered unless conception of the

invention prior to the effective date is clearly established, since diligence comes into

question only after prior conception is established." In the case of this declaration,

diligence does not need to be considered taking into account that conception is not

clearly established. If diligence were to be considered, the dates of the exhibits that are

relied on must not be redacted to prove due diligence, as seen in 2138.06 of the MPEP.

Exhibits B through L prove due diligence but all dates are redacted; however, exhibit M

includes all previous exhibits without redacted dates including dates relied upon for

conception and diligence. Thus, exhibit M proves due diligence.

    With regards to the arguments in reference to the 103 rejections, the Appellant

refers to the 102 rejection previously argued. Accordingly, there are no arguments for

the Examiner to respond to with respect to these sections of the Appeal Brief.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

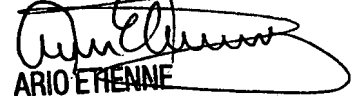Respectfully submitted,

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